

MAY 23 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ALFREDO-CHAVARIN, Jr.,

Defendant - Appellant.

No. 07-30069

D.C. No. CR-00-06017-EFS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted May 20, 2008^{**}

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Jose Alfredo-Chavarin, Jr. appeals from the 132-month sentence imposed following his guilty-plea conviction for conspiracy to distribute over 1,000

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

As an initial matter, we reject the government's contention that we lack jurisdiction to review Chavarin's appeal. *See United States v. Treleven*, 35 F.3d 458, 461 (9th Cir. 1994).

Chavarin contends that the government breached the plea agreement by not moving for a downward departure based on substantial assistance and that the government's failure to so move was arbitrary. The plea agreement demonstrates that the government was not obligated to move for the departure, *see United States v. Cannel*, 517 F.3d 1172, 1177 (9th Cir. 2008), and we conclude that the government's refusal to move was rationally related to a legitimate governmental end, *see Wade v. United States*, 504 U.S. 181, 187 (1992).

AFFIRMED.